The Principle of Ijtihad in Islam

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Brief biography of Ayatullah Mutahhari, definition, types, permissibility and history of .Ijtihad, Akhbarism, and Taqlid

The Principle of Ijtihad in Islam

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The article hereunder translated into English, first appeared in the collection "Bahthi dar barayi Marja`iyat wa Ruhaniyat" (١), which was reviewed by Lambton(٢). This volume contained essays by figures that were then prominent in the anjumanhayi islami, an organization of groups with a religiously educated leadership concerned to initiate public debate of, and interest in, Islamic solutions to contemporary political, .economic and social problems

The occasion for the publication of this volume was the death of the marja` altaqlid of his time, Ayatullah Burujirdi, in ۱۹۶۱, and the discussions contained therein dealt with various aspects of taqlid and the religious institutions. Summaries and discussion of .the articles will be found in Lambton

Most of the authors subsequently became leading names in the ۱۹۷۹ Iranian Revolution. Mahdi Bazargan, who had had both a religious and a secular education and had been influential among the younger generation as a professor at the University of Tehran and later as a politician, became the first Prime Minister of the .new Islamic Republic's provisional government

Ayatullah Taliqani was an active

p: ۱

۱- Tehran, ۱۹۶۲.

۲ - Lambton, A.K.S., 'A reconsideration of the position of the marja` taqlid and the religious institution., Studia Islamica, XX (۱۹۶۴), ۱۱۵۱۳۵. (See also, alSerat, Vol VII, No. ۱ ((۱۹۸۱), p. ۱۲۲۷

revolutionary figure who had spent much time in SAVAK prisons. He was particularly well known in Tehran where he commanded much respect. He died in the early morning of ۱۰ September ۱۹۷۹[1]. Sayyid Muhammad Bihishti became the first head of the Islamic Republican Party, as well as Chief Justice of the post revolutionary High Court; he held both posts until his assassination in the bombing of the Party headquarters on ۲۹ June ۱۹۸۱. Sayyid Muhammad Husayn Tabataba'i was much weakened by illness by the time of the revolution, but was held in universal esteem .for his piety and learning. He died on ۱۵ November ۱۹۸۱

All these figures, except `Allama Tabataba'i were also important members of the Revolutionary Council, which had been set up by Ayatullah Khumayni during his stay in Paris. The author of the present article, Murtadha Mutahhari, had been appointed head of this Council by Ayatullah Khumayni, and it was he who had first convened it. After the victory of the revolution, the Council continued to play an extremely important role in the course of events, even after the setting up of the provisional .government, indeed right up to the formation of the new Majlis

Murtadha Mutahhari was born in a village some forty kilometres from Mashhad in ۱۳۳۸/۱۹۱۹۲۰. After a primary education mostly at the hands of his father, he entered, still a child, the hawzayi `ilmiya, the traditional educational establishment, of Mashhad, but he soon left for Qum, the centre for religious education in Iran. Even during

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For further information on these two persons, refer to the section by Yann Richard -۱ on 'Contemporary Shi`i Thought' in: Keddie, N.R., Roots of Revolution: an .Interpretative History of Modern Iran, New Haven, ۱۹۸۱

the time of his elementary studies there he was greatly affected by the lessons in akhlaq (Islamic ethics) given by Ayatullah Khumayni, which Mutahhari himself described as being in reality lessons in ma`arif wa sayrusuluk (the theoretical and practical approaches to mysticism)(۱), and he later studied metaphysics (falsafa) with .(him as well as jurisprudence (usul alfiqh

He was especially attracted by falsafa, theoretical mysticism (`irfan) and theology (kalam), the "intellectual sciences", and he also studied these subjects with `Allama Tabataba'i. His teachers in law (fiqh) were all the important figures of the time, but especially Ayatullah Burujirdi, who became the marja` altaqlid, and also head of the .hawzayi `ilmiya of Qum, in ۱۹۴۵

Murtadha Mutahhari studied both fiqh and usul alfiqh in the classes of Ayatullah Burujirdi for ten years. He was also deeply affected at about this time by lessons on "Nahj al-Balagha" (۲)given by Mirza `Ali Aqa Shirazi Isfahani, whom he had met in Isfahan. He later said that, although he had been reading this work since his childhood, he now felt that he had discovered a "new world".(۳) Subsequently, Mutahhari became a well known teacher in Qum, first in Arabic language and .literature, and later in logic (mantiq), usul alfiqh, and falsafa

In ۱۹۵۲, Murtadha Mutahhari moved to Tehran, where, two years later, he began teaching in the Theology Faculty of the University. Not only did he make a strong impression on students, but his move to Tehran also meant that he could become involved with such organizations

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۱- See the author's introduction to the new edition of: Mutahhari, M., "IlalGirayish bi .Maddigari' Qum, ۱۹۸۰, pp. ۸۹

۲- The collection of orations, homilies and letters of the first Shi`i Imam, `Ali b. Abi .(Talib, compiled by the Sharif al-Radi (d. ۴۰۶/۱۰۱۵

۳- For these and many other details of Mutahhari's life and times, reference should be made to the article 'Sayri dar zindigiyi `ilmi va inqilabiyi ustad shahid Murtadha

Mutahhari', in: `Abd al-Karim Surush (ed.), Yadnamayi Ustad Shahid Murtadha Mutahhari, Tehran, ۱۹۸۱, pp. ۳۱۹۳۸۰

as the anjuman hayi islami. These Islamic Associations were groups of students, engineers, doctors, merchants, etc., set up during the fifties and sixties; they formed .the nucleus of the movement that was to become, eventually, the revolution

He was also a founder member of the Husayniyayi Irshad, which played a central role in the religious life of the capital during the four years of its existence until its closure by the authorities in ۱۹۷۳(۱). At the same time he maintained his contact with traditional religious activities, teaching first in the Madrasayi Marvi in Tehran, and later back in Qum, and also preaching in mosques in Tehran and elsewhere in the .country

Through his lectures and writings - articles and books - he became a famous and much respected figure throughout Iran, but it was mainly among the students and teachers of the schools and universities that he was most influential, setting an example and inspiring them as a committed and socially aware Muslim with a traditional education who could make an intellectually appropriate and exciting response to modern secularizing tendencies. His wide-ranging knowledge and scholarship are reflected in the scope of his writings, which cover the fields of law, philosophy, theology, history and literature.(۲) He was also one of the few high-ranking `ulama' to be in continuous contact with Ayatullah Khumayni during the fifteen or so years in which the movement which led to the revolution was developing. .He was actively engaged in all the stages of this movement

His life

۱- .It was reopened after the revolution

۲- For a complete list of his published and unpublished works, refer to: `Abd al-Karim .Surush, op. cit., ۴۳۶۵۵۶

came to an abrupt and untimely end when he was shot in the street by an assassin after a meeting of the Revolutionary Council on the evening of ١ May ١٩٧٩. Animated mourning accompanied his funeral cortege from Tehran to Qum, where he was .buried near the shrine of the sister of the eighth Shi`i Imam

The discussion of taqlid had been important in the wake of Ayatullah Burujirdi's death for the reasons given by Lambton. A solution to the problems posed in those articles was never achieved, and events subsequently altered the whole structure of the discussion, but the issues raised did open important new areas for thought. As a result of the revolution, the question of wilayat alfaqih came to the fore, and taqlid became .the subject of even greater public concern

As long as taqlid had been restricted in the common understanding as applying only to matters which belonged to the rubrics of the collections of fatwas issued by the marja`s, the only real debate took place within the legal classroom; but during the seventies, and hand in hand with the reawakening of political sensibilities, the boundaries of fiqh were seen by the public to expand and encompass new territory. The definition of these new frontiers was a source of some confusion, and hence of heightened interest, and, in the great post revolutionary surge of printing, the .Burujirdi volume was reissued

Taqlid had long been a socially important element in Iranian society, and in Shi`i society in general, for

it united people, at least as inhabitants of the same universe of duties and obligations, under their marja`s, but the events leading up to the revolution demonstrated the power that the marja`s could command through, among other means, their issuing of proclamations (`ilamiyas); this was reminiscent of the mobilization of the Iranian people during the tobacco protest of ۱۸۹۱۲, and during the Constitutional Revolution of .۱۹۰۶-۱۱

The following article is presented as a description of taqlid and ijtihad by a leading contemporary Shi`i mujtahid who strove to make Islam comprehensible to the modern Iranian and to find answers to the problems of his time within the Islamic framework. The text has been left in its entirety; there were no footnotes in the .original

It is not for the believers to go forth all together; but why should not a party of every" section of them go forth, to become learned in religion, and to warn their people when (they return to them, that they may beware." (۹:۱۲۲) (۱

?What is ijtihad

The question of ijtihad is a very topical one these days.(۲)Many people ask, either aloud or to themselves, what form ijtihad takes in Islam, and from where Islam got the concept. Why should one practice taqlid? What are the conditions for ijtihad? ?What are the duties of a mujtahid

Broadly speaking, ijtihad has the meaning of being an authority in the matters of Islam; but there are two ways of being an authority and deriving opinions in the matters of Islam in the eyes of us

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۱- The translation of Qur'anic verses and hadiths has been made in accordance with the author's own Persian translation except where this is more an interpretation than a translation, in which case a more literal English translation is given

۲- This address was given on ۱ Urdibihisht ۱۳۴۰ Sh. (۲۱ April ۱۹۶۱), three weeks after the

death of Ayatullah Burujirdi

Shi`i Muslims: one which is in accordance with the shari`a, and one which is forbidden by it. Similarly, taqlid is of two kinds: one which is in accordance with the shari`a, and .one which is forbidden

The kind of ijtihad which is forbidden by the shari'a

Now, the kind of ijtihad which, in our opinion, is forbidden is that which means "legislating" or "enacting the law", by which we mean that the mujtahid passes a judgment which is not in the Book (the Qur'an) or the Sunna, according to his own thought and his own opinion – this is technically called ijtihad alra'y. According to Shi`i Islam, this kind of ijtihad is forbidden, but in Sunni Islam it is permitted. In the latter the sources of legislation, and the valid proofs for determining the shar`ia, are given as the Book, the Sunna and ijtihad. The Sunnis place ijtihad, which is the ijtihad alra'y .explained above, on the same level as the Book and the Sunna

This difference takes its origin in the fact that Sunni Muslims say that the commands which are given in the shari`a from the Book and the Sunna are limited and finite, whereas circumstances and events which occur are not, so another source in addition to the Book and the Sunna must be appointed for the legislation of Divine commands – .and that source is the very same as we have defined as ijtihad alra'y

Concerning this matter, they have also narrated hadiths from the Prophet, and one of them is that when the Prophet sent Mu`adh

b. Jabal to the Yemen, he asked him how he would issue commands there. He replied: “In conformity with the Book.” “And if it is not to be found in the book?” “I will make use of the Sunna of the Prophet.” “And if it is not to be found in the Sunna of the Prophet?” “Ajtahidu ra' yi, “ he replied, which means: I will employ my own thought, ability and .tact. They also narrate other hadiths in connection with this matter

There is a difference of view among Sunni Muslims as to what ijtihad al-ra'y is, and as to how it is to be conceived. In his famous book, the “Risala”(۱) which was the first book to be written on the principles of Islamic jurisprudence (usul alfiqh), (...) alShafi`i insists that the only valid ijtihad according to hadith is qiyas [reasoning by analogy]. Qiyas, briefly, is the taking into account of similar cases, and ruling in a case from .one's own opinion by comparing it with these other similar cases

But some other Sunni fuqaha [experts in fiqh, sing.: faqih] did not recognize ijtihad al... ra'y as being exclusively qiyas; they also counted istihsan [“finding the good” by one's own deliberations] as valid. Istihsan means to see, quite independently, without taking similar cases into account, what is nearest to the truth and to justice, and to give one's .opinion according as one's inclination and intellect approve

Similarly with istislah [determining what is in the interests of human welfare by one's own

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Cairo, ۱۹۴۰) The main work in jurisprudence by Abu `Abdillah Muhammad b. Idris) -۱ al-Shafi`i (۱۵۰/۷۶۷ ۲۰۴/۸۲۰), the founder of the Shafi`iya legal school. He laid the foundations for the systematic treatment of qiyas

deliberations, which means the seeming of one thing as more expedient than another, and ta`awwul in which, although a ruling may have been reached in one of the nusus [the textual bases for a precept of the shari`a sing.: nass], in a verse from the Qur'an or in a hadith from the Prophet, one still has the right, for some reason, to dispense with the contents of the nass and to give priority to one's own independent .(opinion (ijtihad alra'y

Each of these requires explanation and a detailed account, and the Shi`i Sunni debate is relevant to such an account. Many books have been written both for and against this idea, viz., that ijtihad is on a par with textual evidence, and the best of them is the treatise written recently by the late `Allama, the Sayyid Sharaf al-Din, called "al-Nass .(wa l-Ijtihad"(١)

Now, according to Shi`i Muslims, such a kind of ijtihad is not permitted by the shari`a. In the view of Shi`i Muslims and their Imams, the first basic principle of this matter, i.e., that the rulings of the Book and the Sunna are not adequate and that it is therefore necessary to practice ijtihad alra'y, is not correct. There are many hadiths relevant to this discussion, and, in general, [they tell us that] there exist rulings for .every eventuality in the Book and the Sunna

In "al-Kafi"(٢), after the chapter on bid`a [innovation] and maqa'is [measurements], there is a chapter with the title: "Chapter on referring to the Book

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The Sayyid `Abd alHusayn alMusawi Sharaf alDin (١٢٩٠/١٨٧٣٤ ١٣٧٧/١٩٥٧٨), born in - ١ Kazimayn, educated in Najaf, but subsequently resident mostly in the Lebanon. He is popularly famous for his "alMuraja`at" (Sayda, ١٣٥٥/١٩٣٦٧; frequently reprinted), which contains his detailed correspondence with the Egyptian scholar Salim alBishri in defense of Shi`ism. His "AlNass was lIjtihad" was published in Najaf in ١٣٧٥/١٩٥٥۶, and has also been reprinted several times. He is also the author of "Abu Hurayra" (Sayda, .n.d.), a book about the controversial narrator of hadith

AlKafi fi `Ilm al-Din", (ed `A. A. Ghaffari, ٨ vols., Tehran, ١٣٧٧٩) the first and largest " -٢

of the Shi`i collections of hadith, compiled by Muhammad b. Ya`qub b. Ishaq alRazi al-Kulayni (d. ٣٢٨/٩٣٩). It contains over ١٦,٠٠٠ traditions from the Prophet and the Imams covering all aspects of the usul (the 'roots', mainly theological) and the furu` (the 'branches', mainly preceptual) of the religion.

and the Sunna - and there is no halal [permitted thing] or haram [forbidden thing] or anything which the people need which does not come in the Book or the Sunna." The Imams of the ahl albayt have been known since the earliest days as opponents of .qiyas and ra'y

Of course, the acceptance or no acceptance of qiyas and ijtihad alra' y can be studied from two angles. Firstly, from the aspect from which I have looked at it; that is to say, we count qiyas and ijtihad alra'y as one of the sources of Islamic legislation, and place it alongside the Book and the Sunna, and say that there are cases which have not been ruled upon by revelation and which mujtahids must explain using their own opinion. Or alternatively, [we can study it] from the aspect that (. . .) qiyas and ijtihad al-ra'y [are a means for deriving the real rulings, just as we use the other ways and means such as khabar alwahid.(١) In other words, it is possible to perceive qiyas as either a substantive (mawdu`iya) [element in law], or a methodological (tariqiya) .[[principle

In Shi`i fiqh, qiyas and ra'y are invalid in both of the above senses. In the first sense, the reason is that we have no ruling which is not given in the Book and the Sunna; and in the second case, the reason is that qiyas and ra'y are kinds of surmise and conjecture which lead to many errors. The

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١ - The khabar alwahid is that kind of tradition which has not reached the status of tawatur, i.e., has not been narrated by so many traditionalists that there is no doubt about its validity. Under certain conditions, such traditions are admissible as proof .(hujja) in the derivation of precepts

fundamental opposition of Shi`i and Sunni legists in the matter of qiyas is in the first sense, although the second aspect has become more famous among the scholars of .(usul (the principles and methodology of fiqh

The right of ijtihad did not last for long among the Sunnis. Perhaps the cause of this was the difficulty which occurred in practice: for if such a right were to continue [for any great length of time], especially if ta`awwul and the precedence of something over the texts were to be permitted, and everyone were permitted to change or interpret according to his own opinion, nothing would remain of the way of Islam (din .(al islam

Perhaps it is for this reason that the right of independent ijtihad was gradually withdrawn, and the view of the Sunni `ulama became that they instructed people to practice taqlid of only the four mujtahids, the four famous Imams – Abu Hanifa [d.۱۵۰/۷۶۷], alShafi`i; [d.۲۰۴/۸۲۰], Malik b. Anas [d.۱۷۹/۷۹۵] and Ahmad b. Hanbal [d.۲۴۱/۸۵۵] – and forbade people to follow anyone apart from these four persons. This measure was first taken in Egypt in the seventh hijri century, and then taken up in the rest of .the lands of Islam

Ijtihad permitted by the shari'a

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The word ijtihad was used until the fifth hijri century with this particular meaning, i.e., with the meaning of qiyas and ijtihad alra'y, a kind of ijtihad which is prohibited in the eyes of the Shi`a. Up to that time, the Shi`i `ulama included a chapter on ijtihad in

their books only because they wanted to refute it, to emphasize that it was null and .void, and to proscribe it, as did the Shaykh alTusi in some of his works

But the meaning of this word gradually extended beyond this specific meaning, and the Sunni `ulama themselves began not to use 'ijtihad' in the specific sense of ijtihad alra'y, [as a source] which was on the same level as the Book and the Sunna. [Such a shift in the meaning of the word can be seen with] Ibn Hajib(۱) in his "Mukhtasar al... usul", on which `Adud alDin alIji wrote a commentary known as al`Adudi, and which has been till recently, and maybe still is, the authoritatively approved book on [Sunni] ."usul, and before him with alGhazali (۲) in his famous work "alMustasfa

It then became used rather in the unqualified sense of effort or exertion to arrive at the rulings of the shari`a, and was defined as "the maximum employment of effort and exertion in deducing the rulings of the shari`a from the valid proofs (adilla, sing. dalil, see below). However, it is another matter to decide what the valid proofs of the .shari`a are: whether qiyas, istihsan, and so forth, are among them or not

From this time onwards, the Shi`i `ulama also adopted this word because they accepted this [general] meaning. This kind of ijtihad was a kind approved by the shari`a. Although the word had originally been one to be avoided among the Shi`a, after its

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۱- Abu Ja`far Muhammad b. al-Hasan b. `Ali al-Tusi (۳۸۵/۹۹۵ ۴۶۰/۱۰۶۷), the Shaykh al-Ta'ifa (the Chief [scholar] of the [Shi`a] Sect), author of "`Uddat al-Usul" (Tehran, .(۱۳۱۴

۲- ... Jamal alDin Abu `Amr `Uthman b. `Umar b. Abi Bakr b. Yusuf, Ibn alHajib (۵۷۰/۱۱۷۴ ۶۴۶/۱۲۴۹), the Maliki legist, author of "Muntaha alSu'al wa lAmal fi `ilmay alUsul wa l... Jada"' which he condensed into his "Mukhtasar alUsul". Besides alIji's commentary on this abridgement, there is also one by the `Allama alHilli (see below, note ۱۹), called .("Ghayat alUsul" which he wrote to refute alIji's (see: "alDhari`a", XIV, p.۵۶

meaning and the concept it denoted had undergone this change, their `ulama, discarded their prejudice and subsequently had no reservations about using it. It seems that in many instances the Shi`i `ulama, were careful to consider unity of method and conformity among Muslims as a whole. For example, the Sunnis came to recognize ijma` (consensus of opinion among the `ulama) as a proof leading to certainty, and, in practice, they also held it to be fundamental and substantive (mawdu`i) just like qiyas, whereas the Shi`a did not accept it. However, to protect the unity of method, they gave the name ijma` to a principle which they did accept(۱). The Sunnis said that the valid proofs were four in number: the Book, the Sunna, ijma and ijtihad (qiyas); the Shi`a said the valid proofs were four: the Book, the Sunna, ijma` and `aql (reason). They merely substituted `aql for qiyas.

At any rate, 'ijtihad' gradually found a wider meaning, i.e., the employment of careful consideration and reasoning in reaching an understanding of the valid proofs of the shari`a. This, of course needs a series of sciences as a suitable preliminary basis on which to develop the ability to consider and reason correctly and systematically.

The `ulama of Islam gradually realized that the deduction and derivation of the precepts from the combined valid proofs of the shari`a necessitated [the learning] of a series of preparatory sciences and studies such as the sciences of literature, logic, the Qur'anic sciences and tafsir (Qur'anic exegesis), the

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۱ - Abu Hamid Muhammad al-Tusi al-Ghazali (۴۵۰/۱۰۵۸ ۵۰۵/۱ ۱۱۱), who followed the Shafi`i madhhab. The full title of his work on jurisprudence is "alMustasfa min `ilm al-Usul" (۲ vols, Cairo, ۱۳۵۶)

science of hadith and the narrators of hadith (rijal alhadith), the science of the methodology of usul alfiqh, and even a knowledge of the fiqh of the other sects of .Islam. A mujtahid was someone who was a master of all these sciences

I think it extremely likely, though I cannot state this categorically, that the first person among the Shi`a to use the words ijtihad and mujtahid [positively] was the `Allama al-Hilli.(١) In his work " Tahdhib alusul", he puts the chapter on ijtihad after the chapter .on qiyas, and there he uses the word in the same sense in which it is used today

We can therefore say that] the ijtihad which is forbidden and rejected in the eyes of] the Shi`a is ra' y and qiyas, which were originally called ijtihad, whether this is counted as a source of the shari`a and as an independent basis for legislation, or taken as a means for deriving and deducing true precepts; whereas the ijtihad which they deem correct according to the shari`a is that which means effort and exertion based on .expert technical knowledge

In answer to the question: what is the meaning, the use and the place of ijtihad in Islam, it can thus be said that it is ijtihad in the meaning that it is used today, i.e., competence and expert technical knowledge. It is obvious that someone who wants to refer to the Qur'an and hadith must know how to explain the meaning of the Qur'an, he

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١- The main substantial difference between Shi`i and Sunni ijma` is that the former must contain the opinion of the Imam in the consensus. The discussion of how this can be achieved during the Imam's occultation forms one of the important parts of the .science of usul

must know the meaning of the verses, which verses abrogate which verses, which ones have clear meanings and which ones ambiguous meanings(۱) – and he must be .able to distinguish which hadith is valid and authoritative and which not

In addition, he must understand, on the basis of correct rational principles, incompatibilities between hadiths to the extent that it is possible for him to resolve them, and he must be able to distinguish the cases in which the `ulama of the Shi`a sect have consensus (ijma`). In the verses of the Qur'an themselves, and similarly in the hadith, a series of general principles [for verification and interpretation] are laid down, and the use and exercise of these principles need training and practice, just as .in the case of all other basic principles in every science

Like the skilled technician who knows which material to choose from all the materials available to him, the mujtahid must have proficiency and ability. In hadith, especially, there is a great deal of fabrication, the true and the false are mixed together; the expert must have the power to distinguish between them. In short, he must have enough preliminary knowledge so that he can exercise competence, authority and .technical expertise

The appearance of the Akhbaris in Shi'i Islam

Here we must mention an important and perilous current which first appeared around four centuries ago in the Shi`i world over the question of ijtihad – Akhbarism. If a group of the `ulama had not been forthright and challenged it, and had not taken a stand

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Jamal al-Din Abu Mansur, Hasan b. Yusuf b. `Ali b. Mutahhar, the `Allama alHilli – ۱ (۶۴۸/۱۲۵۰ ۷۲۶/۱۳۲۵), the famous legist, philosopher and mutakallim, author of “Tahdhib .(Tariq al Wusul ila `ilm alUsul" (Tehran, ۱۳۰۸

against this current and destroyed it, there is no knowing in what position we should .be today

The actual school of the Akhbaris is no more than four centuries old. Its founder was a man by the name of Mulla Muhammad Amin alAstarabadi [d. ۱۰۳۳/۱۶۲۴], who was, personally, a gifted man who found many followers among the `ulama'. The Akhbaris themselves claimed that the original Shi`is, up to the time of the Shaykh alSaduq (۱), were all followers of the Akhbari doctrine, but the truth is that Akhbarism as a school .with basic postulates did not exist more than four centuries ago

These postulates were: the denial of the possibility of arriving at certainty through exercising reason (`aql); the denial of the validity and the proof (dalil) of the Qur'an on the pretext that the understanding of the Qur'an lay exclusively in the hands of the Prophet's ahl albayt, and that our duty is to consult the hadith of the ahl albayt [for its interpretation and understanding]; the assertion that ijma` was the innovation of the Sunnis; the assertion that, of the four valid proofs (adilla), i.e., the Book, the Sunna, ijma` and `aql, only the Sunna is able to lead to certainty, the assertion that all the hadith that appear in the "four books"" are true and valid, and of categorical .(provenance [from the Imams] (qat`i alsudur

In his book, "`Uddat alUsul", the Shaykh alTusi mentions a group of former Shi`i scholars under the name of the "Muqallida", and adversely

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.(Abu Ja`far, Muhammad b. `Ali b. alHusayn b. Babawayh alQummi (d. ۳۸۱/۹۹۱ -۱

criticizes them; but they had no school of their own, and the reason that the Shaykh called them "Muqallida" was that even in the fundamentals of dogma tics (usul aldin) (they constructed their proofs with hadith.(1)

At any rate, the school of the Akhbaris took its stand against the school of ijtihad and taqlid. They denied the legal competence, jurisdiction and technical expertise that the mujtahids believed in; they considered taqlid of anyone else than the ma`sumin(2) to be illegal. According to them, only the hadith are authoritative, and since there is no right of ijtihad or deriving of opinions, people must necessarily have recourse directly to the texts of the traditions and act upon them, no scholar calling himself a mujtahid .or a marja` altaqlid(3) can act as an intermediary

Mulla Amin alAstarabadi, the founder of this school, and personally a very gifted man, learned and well travelled, wrote a book called "al-Fawa'id alMadaniya" in which he went to war with the mujtahids with astonishing stubbornness. He particularly tried to refute the principle of the authority of `aql. He claimed that it was only a proof in matters which had their origin in the senses, or which were related to sensory objects (such as in mathematics), and that in matters other than these it was inadmissible as (a proof(4

It so happens that this idea was practically contemporary with the appearance of empirical philosophy in Europe. The latter denied the validity of pure reason, and al-Astarabadi denied its validity in

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١- These are: "alKafi" (see note ١٣); "Man la Yahdurahu lFaqih " (ed. H. M. Khirsan, ٤ volumes, Najaf, ١٩٥٧, by ١٩٥٨٦٢), also by alTusi

٢- The fourteen "impeccables": i.e., the Prophet, his daughter Fatimat al-Zahra, and .the twelve Imams

٣- After the student of fiqh has mastered the necessary sciences, he may, if his teacher considers him to be capable of deriving his own legal opinions, receive a certificate authorizing him to do so; but he still cannot be followed by others in taqlid.

For this to happen, he must rise to the final degree and become a marja` altaqlid, where other qualities besides just his scholarship, e.g., his piety and conformity to the shari`a, cause him to be respected above other mujtahids, and thus to become a source of certainty to his muqallids that in following him they will not deviate from the shari`a.

۴- This is a question of certainty (qat`, yaqin): the evidence for the existence of a precept must be such as to leave no room for any kind of doubt in the mind of the person who models his behaviour according to it; in the case of proofs concerning sensory evidence, the very data themselves are only probablistic, so no proof employing them can arrive at demonstrable certainty. Therefore, in such a proof, other probabalistic elements such as `aql are admissible, but these cannot be used to derive the precepts of the shari`a.

religion. Now where did he get this idea? Was it his own original idea, or did he get it .from elsewhere? We cannot say

I remember that in the summer of ۱۳۲۲ [Sh./۱۹۴۳] I went to Burujird, and at that time the late Ayatullah Burujirdi was still living there, not yet having come to Qum. One day, the talk was of this idea of the Akhbaris, and he criticised it, saying that the appearance of this idea among them was the effect of the wave of empiricism that had arisen in Europe. I heard this from him at that time. Afterwards, when he came to Qum, and his lessons in usul alfiqh reached this topic, i.e., the validity of certainty as a proof (hujjat al qat`), I was waiting to hear this opinion again from him, but .unfortunately he did not say anything about it

Now, I cannot say if this had only been a conjecture which he had voiced, or whether he had evidence, but I, myself, have not till now found any evidence for it, and I feel it is extremely unlikely that empirical thinking had then reached the East from the West. However, against this is the fact that Ayatullah Burujirdi never spoke without .evidence. I now regret that I never asked him for an explanation at the time

The struggle with Akhbarism

In brief, Akhbarism was a movement in opposition to `aql. An amazing ossification and inflexibility ruled in their doctrine. Fortunately, some discerning individuals like ,"Wahid Bibhihani (۱), famous as "Aqa

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۱- ۱۲۰۸/۱۷۹۳۴ (۱۱۱۶۸/۱۷۰۴۷ Muhammad Baqir b. Muhammad al-Bihbihani).

whose descendants are even now known as "Ali Aqa (Family of Aqa)", and his pupils, and afterwards the late Shaykh Murtadha alAnsari(١), took a stand and fought against .this doctrine

Wahid Bihbihani lived in Karbala.(٢) At that time, the author of the "Hada'iq"(٣) an erudite Akhbari, was also in Karbala, and both of them had a following of students. Wahid was a follower of the doctrine of ijtihad, and the author of the "Hada'iq" of the Akhbari doctrine, and occasionally there were bitter disputes. In the end, Wahid Bihbihani defeated the author of the "Hada'iq", and it is said that the outstanding pupils of Aqa Wahid, such as Kashif alGhita', Bahr al`Ulum and the Sayyid Mahdi Shahrastani(۴), had first of all been pupils of the author of the "Hada'iq" and had .afterwards left him and joined the lessons of Wahid Bihbihani

Of course, the author of the "Hada'iq" was a moderate Akhbari; he claimed that his doctrine was identical with that of Muhammad Baqir al-Majlisi (۵), half way between Akhbari and Usuli. Moreover, he was a pious and God-fearing man of faith, and although Wahid Bihbihani fought against him vociferously and forbade congregational prayers behind him, he, quite the contrary, said that congregational prayers behind Aqa Wahid were valid. It is said that at the time of his death he left in his will that .Wahid Bihbihani should recite his funerary prayer

The struggle of the Shaykh alAnsari was such that he managed to build a solid foundation for the science of usul

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١- The Shaykh Murtadha b. Muhammad Amin b. Shams alDin b. Ahmad b. Nur alDin b. Muhammad Sadiq alShushtari alDizfuli alAnsari (١٢١۴/١٧٩٩ ١٢٨١/١٨۶۴), whose "Rasa'il", on usul alfiqh were published as "Fara'id alUsul"(Tehran, ١٢٩۶). His works in usul and fiqh now form the backbone of the presentday teaching of these subjects

٢- One of the `atabat, the Shi`i sacred towns in Iraq, the site of the battle where the third Imam, alHusayn, and his followers were massacred on ١٠ Muharram ۶١/۶٨٠. It is about ٩۵ kms. S.S.W. of Baghdad

The Shaykh Yusuf b. Ahmad alBahrani (d. ۱۱۸۶/۱۷۷۲), author of "alHada`iq alNadira -۳
.(Ahkam al`Itra alTahira" (ed. M.T. alIrwani, ۲۰ vols., Najaf, ۱۳۷۷

a) Ja`far b. Khidr b. Yahya alNajafi (۱۱۶۴/۷۵۱ ۱۲۲۷/۱۸۱۲), known as "Kashif alGhita `an -۴
Mubhamat alShari`a alGharra" (Tehran, ۱۲۷۱). b) The Sayyid Muhammad Mahdi b. Murtadha b. Muhammad b. ` Abd alKarim alHasani alHusayni (۱۱۵۴۵/۱۷۴۱۲ ۱۲۱۲/۱۷۹۷), known as the Sayyid Bahr al`Ulum. c) The Sayyid Muhammad Mahdi alShahrastani al...
.(Ha'iri b. Abi'lQasim alMusawi (d. ۱۲۱۶/۱۸۰۱

Muhammad Baqir b. Muhammad Taqi b. Maqsud `Ali alMajlisi alIsfahani (۱۰۳۷/۱۶۲۷ ... -۵
۱۱۱۱/۱۷۰۰), compiler of the encyclopaedic collection of Shi`i hadith, "Bihar alA nwar" (۱۱۰
([vols, Tehran, ۱۳۷۶ [vol. VIII, Tehran, ۱۳۰۴

alfiqh; and it is said that he maintained that if Amin alAstarabadi had been alive he .would have accepted his usul

Naturally, the Akhbari school was defeated as a result of this opposition, and now it has no following except here and there. However, not all the ideas of Akhbarism, which penetrated people's minds so quickly and securely after the appearance of Mulla Amin, and which held sway for more or less two hundred years, have disappeared. Even now we see many who do not recognize the permissibility of an exegesis of the Qur'an unless a hadith is quoted. The inflexibility of Akhbarism still reigns in many of the matters of akhlaq (ethics) and in social problems, even in some .parts of fiqh. But now is not the time for me to expand on this

One thing which is a cause of the popularity of the Akhbari way of thinking is their self-righteousness, which is pleasing to ordinary people, because their ideas are formulated in such a way that they seem to be claiming: "we are not saying anything we have invented ourselves, we are people of obedience and submission; we say nothing except what the Imam al-Baqir (or the Imam alSadiq, etc.) said; we do not ".speak ourselves, we only say what the ma`sumin said

In the chapter on ihtiyat and bara'a (precaution and exemption from obligation) in his "Fara' id alUsul" the Shaykh alAnsari quotes from Ni`mat Allah alJaza'iri(۱), who :maintained the doctrine of the Akhbaris

Can any rational person

The Sayyid Ni`mat Allah b. `Abdillah b. Muhammad alMusawi alJaza'iri (d. ۱۱۱۲/۱۷۰۰), -۱ .(a pupil of the `Allama alMajlisi (see previous note

conceive the possibility that on the day of Resurrection they will bring forth one of the slaves of Allah (i.e., the Akhbaris) and ask him how he acted, and that when he says that he acted according to what the ma`sumin ordered and that everywhere there was no word from the ma`sumin he desisted as a precaution, they will take such a person to Hell, while they will lead a thoughtless person who was inattentive to the words of the ma`sumin (i.e., an Usuli who follows the doctrine of ijtihad), who rejects !every hadith on the slightest pretext, to heaven? It is not possible

The answer which the mujtahids give is that this kind of obedience and submission is not submission to the words of the ma`sumin, but submission to ignorance. If it is really certain that the ma`sumin said something, then we must submit; but these .people wanted to submit ignorantly to everything they heard

I will give as an example something which I have recently come across, so that the difference between the rigid Akhbari way of thinking and the ijtihadi way of thinking .can be seen

A sample of the two ways of thinking

It has been commanded in many hadiths that the end of the turban should always hang down and pass round the neck, not only at the time of prayer, but at all times. :One of these hadiths is as follows

The difference between a Muslim and an unbeliever is the passing of the end of the .(turban round his neck (altalahhi

A number of Akhbaris

p: ۲۱

have seized upon this hadith and those like it, and said that the end of the turban must always hang down. But Mulla Muhsin Fayd(١), although he did not think very highly of ijtihad, did in fact act in accordance with ijtihad in his chapter on apparel and adornment (alziy wa ltajammul) in his "Kitab al-Wafi': and say that in former times the unbelievers had a slogan to the effect that the end of the turban should be tucked in on top, and they called this act iqti`at.

If someone did this, it implied that he was one of them, and this hadith ordered that this slogan should be challenged and not followed. However this slogan has for a long time ceased to be current, and thus the subject of the hadith is no longer a matter of concern; on the contrary, since everyone tucks the end of his turban in on top, it is forbidden for someone to drape it round his neck, for it would be dressing in a way which drew attention to oneself, and this is unlawful.

Here the ossified doctrine of Akhbarism ruled that the text of the hadith ordered that the end of the turban must hang down, and it is an interference with it for us to add our words to it and give our own opinion and practice ijtihad. But the thinking of ijtihad is that we have two commands: one is the command to keep clear of the slogan of the unbelievers,

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١- Muhammad b. Murtadha b. Mahmud Muhsin alKashani (d. ١٠٩١/١۶٨٠).

which is the spirit of the subject of this hadith; and the other is the command to avoid .ostentatious dress

In the days when this slogan had currency, and Muslims were trying to avoid appearing to comply with it, it became an obligation on everybody to keep the ends of their turbans hanging down; but now that this state of affairs no longer pertains and the slogan has fallen into oblivion, and now that ordinarily noone lets the end of his turban hang down, if someone were to do this, it would be an instance of ostentatious clothing, and this is illicit. This is just one example which I wanted to give you: there .are many like it

:It is narrated from Wahid Bihbihani that he said

Once, the new moon of Shawwal [the month following Ramadan] had been established because it had been sighted by many people (tawatur). So many people came and said that they had seen the new moon that certainty had been obtained in the matter for me(١), so I gave the order that that day was the `Id alFitr [the feast .[marking the end of Ramadan

One of the Akhbaris protested to me that I had not seen it myself, and that it had not been witnessed by people who had been proven to be `adil [to always act in accordance with the shari`a], and that I should therefore not have given the ruling. I said that it was mutawatir, and that this was a source of

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١- It is to be understood that tawatur is a proof of certainty according to the science of usul al-fiqh, and that it has been so established independently of textual proofs. This rational view was challenged by the Akhbaris precisely because of the lack of textual .backing

certainty for me. He then asked me in what hadith it had been narrated that tawatur .was a valid proof leading to certainty

It is also well known that some of the Akhbaris gave the command that the testimony :of belief should always be written on the shroud of the corpse in this way

.(Isma`il yashhadu an la ilaha illa llah (Isma`il testifies that there is no God but Allah

Now the reason [they say] that the testimony is to be written in the name of Isma`il is that it is narrated in a hadith that the Imam alSadiq wrote in this way on the shroud of his son Isma`il. The Akhbaris had never stopped to think that it was written thus on his shroud because his name was Isma`il; and that now, for example, that Hasan has died, they should say: "We should write his own name on the shroud, not that of Isma`il." Instead they argued: "This would be ijtihad, resorting to one's own opinion and relying on `aql. We are the people of obedience and submission to the words of ".the Imams alBaqir and alSadiq, and we, for our part, will not interfere

The kind of taqlid that is forbidden by the shari`a

point

Let us now turn to taqlid. It is [as was said before] of two kinds: licit and illicit [in terms of the shari`a]. There is a kind of taqlid which is the blind following of one's surroundings and of habit, which is, of course, forbidden, and it is this which is condemned in the Qur'an when those

:who say

Behold, we found our forefathers agreed on what to believe - and verily, it is but in (their footsteps that we follow. (۴۲:۲۳

are condemned. We have said that taqlid is of two kinds: licit and illicit. What we meant by illicit taqlid is not confined solely to the kind of taqlid which is the blind imitation of one's surroundings, of habit, of one's parents or ancestors, but we wanted also to say that taqlid between those who do not have [the necessary] knowledge (al-jahil) and those who do (al`alim), the consultation of the faqih by the ordinary person, is of two .kinds: licit and illicit

We occasionally hear these days from some people who are looking for a marja` al-taqlid, that they are looking to find someone to whom they can give unqualified allegiance. We want to say that the taqlid which Islam has commanded is not "unqualified allegiance"; it is the opening, and keeping open, of one's eyes, of awareness. If taqlid takes on an aspect of devotion, thousands of evil affects will .come about

Now there is a well-known and detailed hadith on this subject which I shall quote for :you

Whichever of the fuqaha can protect his self(۱), who can preserve his religion, who fights his desires and is obedient to the commands of his Master, should be followed .by the people in taqlid

This is one of the textual proofs for taqlid and ijtihad. The Shaykh alAnsari said about this hadith that the signs of truth are evident

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۱ - Protecting the nafs, the soul, the greater, moral jihad, as opposed to the lesser .jihad of protecting Islam against the external enemy

.in it

:It is an appendage to the following verse from the Qur'an

And there are among them unlettered people who have no real knowledge of the (divine Book, only wishful beliefs, and they depend on nothing but conjecture.(۲:۷۸

This verse comes in condemnation of the ignorant and illiterate Jews who followed, and practiced taqlid of, their religious scholars and leaders, and it comes after some verses which mention the unattractive behavior of the Jewish religious scholars. It points out that a group of them were such ignorant and illiterate people that they knew nothing of the divine Book except a string of imaginary beliefs [about it] and such things as they wished to believe, and that they had gone after surmise and .illusion

The hadith of the sixth Imam concerning the kind of taqlid which is illicit

The following hadith is connected to the previous verse. Someone said to the Imam alSadiq that the ordinary, illiterate Jews had no other alternative but to take in everything they heard from their religious scholars and to follow them. If there is any blame, it should be directed towards the Jewish scholars themselves. Why should the Qur'an censure helpless ordinary people who knew nothing and were only following their scholars? What difference is there between the common Jew and the common Muslim? If taqlid by ordinary people and their following of the learned is forbidden, we Muslims, who follow our scholars, this person reasoned, must also be the objects of reprehension and censure. If the former should not have accepted what their scholars said, then the latter should not

.accept what their scholars say

:The Imam said

In one respect there is a difference between the ordinary Jew and the Jewish scholars, and the ordinary Muslim and the Muslim scholars, and in another respect there is a similarity. In so far as there is a similarity, God has commanded the ordinary Muslim also not to practice that kind of taqlid of scholars, but in so far as there is a .difference, He has not

The person who had asked the Imam then said: O son of the Messenger of Allah, .please explain what you mean

:Then Imam said

The ordinary Jews could see from their scholars and the way that they behaved that they were quite clearly lying: they did not refrain from accepting bribes; they changed the laws and the rulings of the courts in exchange for favors. They knew that they displayed partiality to certain individuals. They indulged their personal likes and dislikes; they would give one man's right to someone else. .. On account of natural, common sense, which God has created in everyone, we all know that we must not accept the speech of people who behave in such a way as this; we must not accept .the word of God and the prophets from the tongues of such people as this

What the Imam meant here was that noone can say that the ordinary Jewish people did not know that they should not act in accordance with what had been said by those of their scholars who acted contrary to

the divine commands of their religion. This is not something that someone might not know. Knowledge of this kind is put by God into every person's nature, and everyone's reason acknowledges it. In the terminology of logic, it is a 'inborn' proposition; its proof is contained within itself. According to the dictate of every intellect, one must not pay any attention to the utterance of someone whose philosophy of life is purity and the rejection of the human passions but who pursues what his desires tell him to. :Then the Imam continued

It is the same thing for our people: they too, if they understand or see with their own eyes that there is behavior contrary to the shari`a on the part of their scholars, strong prejudices, a scramble after the ephemera of this world, preference for their own supporters however irreligious they may be, and judgment against their opponents even when they deserve verdicts in their favor, if they perceive such behavior among them and then follow them, they are just the same as the Jewish people and should .be reprimanded and censured

So it is clear that unquestioning allegiance and shutting one's eyes to the truth is not the kind of taqlid which is encouraged or permitted by the shari`a. Licit taqlid means having one's eyes open and being observant and alert; otherwise it is accepting .responsibility for, and being an accomplice to, an illicit act

Regarding the popular belief that the `ulama cannot be tainted by immorality

Some people imagine that the effect of sin on individuals is not of only

one kind: that sin has an effect on ordinary people which annuls their piety and right behavior, but that it has no effect on the `ulama' who have some kind of immunity. It is like the difference between a little water and a lot which, if it is more than one kurr (۱), cannot be tainted by any unclean thing. Now, in fact, Islam does not consider :anyone to be untaintable, not even the Prophet. For why then should God have said

?'.O Prophet] say: 'I also, if I commit a sin, fear punishment on the Great Day‘

:Why should He have said

If any kind of attributing godhood to other than Allah (shirk) enters your actions, your ?work will be spoilt

All this is to show that there is no kind of partiality or discrimination, there is no .immunity from sin for anyone

The story of Moses and God's righteous servants, which is in the Qur'an, is a wonderful story. One moral which can be drawn from it is that the follower should surrender to the one he is following up to the point where basic principles and the law are not contravened. If it is seen that the leader does something against these principles, one must not remain silent. It is true that the fact that in the story the things which the servant of God does are not, in his view, against these basic principles, since he sees a wider horizon and can see into the heart of the matter; they

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۱- One kurr of water is approximately ۳۷۷ litres. In religious law if an amount less than this comes into contact with a religiously impure thing, the water too becomes impure, .whereas above this amount the purity is not endangered

.were, rather, his very duty and responsibility

But the question here is why Moses was not patient, and why he gave vent to his criticisms, despite the fact that he had promised [the servant of God] and himself that he would not make any objection? Why, then, did he protest and criticize? The defect in Moses' actions was not his protesting and criticizing, but the fact that he was not aware of the un-divulged aspect of the matter, the inward and secret side of the .events

Of course, if he had been aware of the hidden reasons for what happened, he would not have objected, and he would have wanted to discover the secret of the affair; but as long as his actions were, from his own point of view, against basic principles and .the divine Law, his faith would not allow him to remain silent

There are those who have said that if the actions of that servant of God were to be repeated on the Day of the Resurrection, Moses would still object to them and criticize them, unless, by that time, he were to become aware of the hidden reasons behind :them. Moses said to the servant of God

Shall I follow you so that you may teach me, of what you have been taught, right" ".judgement

".Assuredly you will not be able to bear with me patiently"

:Then he explained the reason very clearly

And how should you bear patiently what you have never encompassed in your" "?knowledge

:Moses said

Yet you"

".will find me, if Allah will, patient, and I shall not rebel against you in anything

Moses did not say that he would be patient whether he discovered the secret of the matter or not. He merely said that he hoped he would have that patience. Of course, .this patience did exist within Moses as long as he understood the reason for things

Then the servant of God wanted to have something more definite from him; that, even if he did not discover the reason for what had happened, he would remain silent .and not protest until the time came for him to explain

Then, if you follow me, do not question me on anything until I myself introduce the" (mention of it to you." (۱۱۷:۶۶۷۰

Here, the verse does not say if Moses accepted; it only says that after this they both .set out together and continued till the end of the story which we all know

At any rate, I wanted to show that the ignorant person's taqlid of the learned should not be blind allegiance. The unlawful kind of taqlid between one who is ignorant and one who has knowledge is that kind in which unquestioning obedience exists, which takes some such form as: "an ignorant person cannot quarrel with a learned person; we don't understand, perhaps the duties imposed by the shari`a necessitate its being ".like this

I have mentioned this story as evidence and corroboration for what was in the hadith (of the Imam alSadiq.(۱

Taqlid permitted by the shari`a

point

After what I have narrated concerning the

.Abd Salih, the "Righteous Servant". For this story see the sura of "alKahf', ۶۰ ۸۲` -۱

kind of taqlid forbidden by the shari`a, the Imam went on to explain the kind of taqlid :permitted by the shari`a the kind which is to be praised, in these words

Whichever of the fuqaha' can protect his self, who can preserve his religion, who fights his desires and is obedient to the commands of his Master, then he should be .followed by the people in taqlid

Of course, it is clear that the struggle of a spiritual `alim with his weaker desires is very different from the struggle of an ordinary person, because the desires of each individual are associated with specific activities. The desires of a youth are one thing, the desires of an old man another; everyone, in whatever position, degree, stage or age he may be, has a particular kind of desire. The standard for subservience to inferior desires for a spiritual `alim is not what we see: for example, whether he drinks alcohol or not, whether he has stopped praying and fasting or not, whether he gambles or not.(١)

The standard for the subservience to inferior desires for such a person is whether he desires position, to have his hand kissed, to become famous and popular and have people walk behind him, to use the wealth of the Muslims to lord over others, to allow his friends and relatives, especially his sons, to benefit from the wealth of the :Muslims. Then the Imam said

Only some of the Shi`i fuqaha have these great qualities and traits of

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١- Since he obviously refrains from such activities.

.character, not all of them

This hadith, on account of its final phrases, is one of the pieces of evidence in the .question of ijtihad and taqlid

So it is clear that both ijtihad and taqlid can be divided into two kinds: that which is .permitted by the shari`a and that which is not

Why is taqlid of a dead person not permitted

We have a principle in fiqh, which is one of the indisputable points of our fiqh, that taqlid of a dead person in the first instance is not permitted. If taqlid of a dead person is permitted, it is only when taqlid is carried on from someone who was followed [by the same person] while he was alive and is now dead.(١) Moreover, the carrying on of the taqlid of a dead person must also be with the permission of a living mujtahid. I am not concerned here with the reasons in fiqh for this principle, so I will only say that it is a very basic idea, but only on the condition that the aim of the principle is clearly .understood

The first purpose of this principle is that it should be a means for the survival of the traditional centers of learning of the Islamic sciences, so that there should be continuity, and that the Islamic sciences should be preserved - not only preserved, but that they should advance day by day and be perfected, and that those matters .which had not previously been solved should be solved

It is not the case that all our problems have

According to a commonly accepted ruling, this applies only to those matters which -١ the muqallid formerly performed according to the fatawa of the subsequently deceased marja` al-taqlid. If any new matter arises for him, he must follow the fatwa of a living, `adil mujtahid

been solved in the past by our `ulama', and that now we have no more problems and no more work. We have thousands of riddles and difficulties in kalam (theology), Qur'anic exegesis, fiqh and the other Islamic sciences, many of which have been solved by the great `ulama' of the past, but many of which remain, and it is the duty of those who follow on to solve them and to gradually write better and more complete texts in each subject, to continue each subject and develop it, just as in the past, too, exegesis, theology and law were gradually developed. The caravan must not be brought to a halt in mid journey. So people's taqlid of living mujtahids, and their heeding them, is a means to the continuance and development of the Islamic .sciences

Another reason is that every day Muslims are faced with new problems in their lives, and they do not know what their duty is in these matters. It is necessary to have living fuqaha', aware of the contemporary situation, to respond to this great need. It is :narrated in one hadith concerning ijtihad and taqlid

.As for alhawadith alwaqi`a, refer concerning them to the narrators of our hadith

These hawadith alwaqi`a are exactly these new problems which arise as time passes. Study and research into the books of fiqh from different epochs and centuries shows that gradually, according to the needs of the people, new problems arise in fiqh, and .that the fuqaha' set out to answer them

.It is for this reason that the dimensions of fiqh have increased

If a researcher were to make a tally, he could discover, for example, in what century, in what place and for what reason, such and such a problem arose in fiqh. If it were not necessary for a living mujtahid to give answers to these problems, what difference would there be between taqlid of a living person and taqlid of a dead person? It would be better to follow in taqlid some of the dead mujtahids like the Shaykh alAnsari, who, on the admission of the now living mujtahids themselves, was .the most knowledgeable and learned

Basically, the 'secret' of ijtihad lies in applying general principles to new problems and changed circumstances. The real mujtahid is one who has mastered this 'secret', who has observed how things change, and subsequently how the rulings on them have changed. For there is no skill in only thinking about things which are in the past and have already been thought about; or, at the most, changing an `ala laqwa into an `ala lahwat.(۱), or vice versa; there is no need to make a song and dance about any of .this

Of course, ijtihad has many preconditions and prerequisites; a mujtahid must have acquired the various [preliminary] sciences. It is necessary that he should have applied himself to the study of Arabic language and literature, to logic, to the study of usul (jurisprudence), even to the history of Islam and the fiqh of

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۱- Two principles (usul `amalia) for the preponderance of one opinion over another in fiqh. If one opinion is chosen over another `ala laqwa, it is chosen because the proof for it is thought to be stronger; if it chosen `ala lahwat, it is because of the principle of precaution (ihtiyat) which requires that what is least likely to be at variance with the shari`a should be adopted. It will be appreciated that there may be a good deal of rather trivial argument as to whether one or the other of the two opinions should be .chosen, according to which of these two principles is preferred

.the other sects, so that he might become a true and thorough faqih

No one can ordinarily lay claim to ijtihad just by reading a few books on Arabic grammar, or rhetoric and logic, then three or four of the set books for the intermediate stage, such as the "Fara'id", the "Makasib" or the "Kifaya"[١], and then spending a few hours in the darsi kharij.[٢] He does not then become qualified to sit .with the "Wasa'il" and "Jawahir"[٣], in front of him and issue legal opinions

He must be completely knowledgeable in exegesis and hadith, that is to say in the several thousands of hadith which appeared in the two and a half centuries from the time of the Prophet to the time of the Imam alHasan al`Askari, and of the circumstances in which they appeared; he must also know Islamic history and the fiqh of other Islamic sects, and the narrators of traditions and their biographies and .reliability

Ayatullah Burujirdi was a true faqih. It is not my habit to mention people by name, and while he was alive I never mentioned him in my lectures. But now that he has died and there can be no ulterior motive, I can say that this man was truly a distinguished and outstanding faqih. He was conversant with, and proficient in, all these sciences, in exegesis, hadith, knowledge of the narrators of hadith, in the sciences of the evaluation of hadith (`ilm al-daraya), and in the fiqh of the other sects of

p: ٣۶

١- a) for "Fara'id al Usul", see above, note ٢۶. b) "Kitab alMakasib", also by the Shaykh alAnsari, an extensive exposition of the section in fiqh on transactions. c) "Kifayat al-Usul" (٢ vols, Tehran, n.d.) by "Akhund" Mulla Muhammad Kazim alKhurasani (d. .١٣٢٩/١٩١١), a systematic text on usul alfiqh

٢- After the student (talaba, lit. 'seeker') has completed his reading of the main texts and mastered the necessary preliminary sciences, he may continue to the more detailed, but also more specialised, courses given by the main teachers of the subjects concerned. These lessons, the darsi kharij, are kharij to (outside, beyond) the texts, and the teacher will expound his own opinions, thus teaching the actual practice

of ijtihad. The teacher will be able to assess the abilities of his pupils in these classes, and, in the case of fiqh, may subsequently award a certificate of ijtihad to those he considers to have mastered all the required skills and to be consequently in a position to employ them to arrive at their own legal opinions (see also above, note ٢٣).

٣- a) "Wasa'il alShi`a" (ed. `A. alRabbani M. alRazi, ٢٠ vols, Tehran, ١٣٧۶ ١٣٨٩), by the Shaykh Muhammad b. alHasan alHurr al`Amili (d. ١١٠۴/١۶٩٣); the most comprehensive collection of hadith relevant to fiqh, arranged according to subject matter. b) "Jawahir alKalam" (ed. `A. Quchani et al., ۴٣ vols, Najaf-Qum-Tehran, ١٣٧٧١۴٠١), by the Shaykh Muhammad Hasan b. Baqir alNajafi (d. ١٢۶۶/١٨۴٩); an extensive commentary on the "Sharayi` alIslam" by the Muhaqqiq alHilli (۶٠٢/١٢٠٢ ۶٧۶/١٢٧٧).

.Islam

How the faqih's outlook on the world affects the legal opinions he issues

The work of a faqih and mujtahid is the deduction and derivation of the precepts [of the shari`a]; but his knowledge and understanding of all things, in other words, his worldview, has a great influence on the decisions he makes. The faqih must have all the information on matters upon which he is going to issue a fatwa. If we imagine a faqih who is always sitting in the corner of his house or his madrasa, and compare him with a faqih who is conversant with the currents of life, both of them refer back to the valid proofs of the shari`a, but each one of them will derive his legal rulings in a .particular way, using a particular method

Let me give an example. Suppose that someone who grew up in Tehran, or in a big town like Tehran, where running water is in plentiful supply and there are reservoirs and tanks and gutters, becomes a faqih and wishes to issue a fatwa concerning the .precepts about what is pure and what is impure

When he refers to the hadiths on purity and impurity, such a person will, owing to his own previous experience, make a deduction in a way which will be extremely circumspect and will necessitate the avoidance of many things. But the same person, once he has been to the House of God [the Ka`aba] and seen the conditions of purity and impurity and the lack of water in that place, will find himself changing his outlook

regarding the subject of purity and impurity. After such a journey, if he consults the .hadiths on this matter, he will see them in a different light

If someone compares the fatwas of the fuqaha' with each other, and then pays attention to the individual circumstances and each of these scholars' ways of thinking about living problems, he will see how the mental environment of a faqih and the information he has concerning the outside world influence his legal rulings in such a way that the legal rulings of an Arab faqih have an Arabic flavor, those of an Iranian have an Iranian flavor, and those of a country dweller have a rustic flavor as opposed .to the urban feel of those of a city dweller

This religion is the final religion; it is not exclusive to a particular time or place; it is relevant to all times and places. It is a religion which came to establish order and progress in the life of man, so how could a faqih who is uninformed of the natural arrangement and movement of things and who does not believe in a progression towards perfection in life, deduce the high and truly progressive laws of this upright (hanif) religion in a way which is in perfect accordance with the truth? For this religion came to give order to this natural arrangement, movement and development, and it .guarantees its guidance

The understanding of necessities

At the present time, we have some cases in our fiqh where our fuqaha' have

given a definite ruling on the requirement of something only because they have seen the necessity and importance of the matter. In other words, since there is no transmitted evidence from the verses of the Qur'an or from hadith which is explicit and sufficient, and since there is also no valid consensus in the matter, they have used the fourth basic principle of derivation, i.e., the principle of independent reasoning .((`aql

In this kind of instance, the fuqaha' become certain that the command of God in such and such a case is such and such, because of the importance of the matter and their knowledge of the spirit of Islam which leaves no important matter in abeyance. For example, in the case of the legal ruling given by the fuqaha' concerning the guardianship (wilaya) of the ruler and the subsidiary problems connected with it, if the importance of this matter had not been realized, no legal rulings would have been .issued

The fuqaha' have only issued them to the extent which they understand to be necessary. Other instances similar to this can be found where the reason that a legal ruling has not been given is the fact that the importance and necessity of the matter .has not been fully realized

An important recommendation

Here I have a recommendation which could be most useful for the advancement and development of our fiqh. It was previously put forward by the late Shaykh `Abd al-... .Karim al-Yazdi(١), and I am here only reiterating his proposal

He asked what

The Shaykh `Abd alKarim b. Muhammad Ja`far alMirjirdi alYazdi alHairi (١٢٧۶/١٨۵٩۶٠ -١ ١٣۵۵/١٩٣٧), whose move from Arak to Qum in ١٩٢٠ began the modern history of that city .as a centre of Shi`i learning

it was that required people to follow only one person in taqlid in all matters. Would it not be better if specialized divisions were established in fiqh? That is to say, there would be groups who, after having completed the general study of fiqh and become experts in it, would specialize in one particular section, and then people would follow .them in that particular section

For example, some would take as their specialization `ibadat (the rites of Islam), and others mu`amilat (transactions), some siyasat (politics), and other ahkam (criminal law); this is exactly what has been done in medicine where specialized branches have been created, and doctors divided into groups for each specialty, some being heart specialists, some eye specialists, some ear, nose and throat specialists, and others specialists in other branches. If this were done, each person could study his own branch more thoroughly. I believe that there is a discussion of this matter in the book ("alKalam Yajurru lKalam" by the Sayyid Ahmad al-Zanjani.(١)

This recommendation is a very good one, and I will add only that the need to divide fiqh up and to create specialized branches arose a hundred years ago, and in present circumstances the fuqaha of today will impede the forward development of fiqh and .stunt its growth unless they heed this recommendation

The division of the sciences into specialised branches

The division of the sciences is the result of their development, but also its cause. For a science gradually progresses until it reaches the point where it is no longer possible for a

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The Sayyid Ahmad alHusayni alZanjani (۱۳۰۸/۱۸۹۰ ۱۳۹۳/۱۹۷۳), a Qummi scholar. His -۱ "alKalam Yajurru lKalam" (۳ vols, Tehran, ۱۳۶۳/۱۹۴۴) is a compendium of historical, .literary, biographical and hadith information

single person to investigate all the problems it raises. It must then necessarily be divided up into branches of specialization. Thus the division of a science and the creation of branches within it is the result and the effect of the development of that science, while, at the same time, more progress is made when these branches are .created, and thought can be concentrated on the special problems in each branch

In all the world's sciences - medicine, mathematics, law, literature and philosophy - branches of specialization have been created, and for that very reason progress has .been accelerated in each of these branches

The progress made in fiqh during the last thousand years

There was a time when fiqh was a very limited science. When we refer back to the texts before the time of the Shaykh alTusi, we see how restricted it was. By writing his "alMabsut", alTusi took fiqh into new realms and enlarged its scope, and in the course of time, as a result of the efforts of the `ulama' and fuqaha, and because of the creation of new problems and the initiation of new investigations to answer them, fiqh progressed even further, to the point where, about a hundred years ago, when the author of the "Jawahir" wrote his complete compendium of fiqh, he was only just able .to finish it

It is said that he started his task when he was about twenty years old, and that, thanks to his extraordinary genius, continual work and a long life, he was able to write the last pages

right at the very end of his life. The “Jawahir” was printed in six very bulky [lithographed] volumes, while the whole of al-Tusi's “al-Mabsut”, which was in his time the example of a comprehensive work on fiqh, is probably less than half of one of .these six volumes

After the author of the “Jawahir” died, the foundations of a new fiqh were laid by the Shaykh Murtadha al-Ansari, and the epitome of this new fiqh was that great man's “alMakasib” and “alTahara”.(١)Since his time, noone could even conceive of teaching a .complete cycle of fiqh with such thorough explanation and research

At the present time, after this advance in the development of our fiqh, which occurred in the same way as similar advances in other sciences all over the world, and which has been the result of the efforts of the `ulama' and fuqaha' of the past, the scholars of today will find themselves faced with the choice of either curbing any further progress in fiqh or putting this sensible and progressive recommendation into practice and creating branches of specialization, as a result of which people will come to discriminate in their taqlid, in the same way as they discriminate in referring to a .doctor

'A council of fuqaha

There is another recommendation which I wish to make, and the more fully I explain what I have in mind the better it will be. At the present time, when branches of specialization exist in every science, resulting in breathtaking advances in these sciences, there is

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By the Shaykh alAnsari -١

another practice which, in its turn, has acted as a contributing factor, and this is practical and theoretical cooperation between first rank scientists and specialists in all .the branches of science

Now, solitary theorizing or experiment no longer has any value, nothing is to be achieved from going one's own way. In every branch, scholars and scientists are constantly engaged in exchanging ideas; they put the results of their thinking at the disposal of other specialists, and the scientists of one continent cooperate with those .of another

The result of this theoretical and experimental cooperation between first rank scientists is that if a useful and valid theory is put forward, it can be published and establish itself more quickly, whereas, if a theory is weak, its failing can be discovered and it can be eliminated sooner, so that in the future the pupils of the authorities who .developed these theories will be saved from these errors

Unfortunately, we still have not created any division of labor or specialization among ourselves, no practical or theoretical cooperation, and it is clear that as long as this is delayed, progress and the solution of difficulties cannot be achieved. There is no need for a proof of the need for scientific cooperation and the exchange of ideas since it is so self evident, but so that it may not be doubted, I shall show, by quotations from the Qur'an and "Nahj alBalagha ", that this recommendation, this progressive order, is to be found within Islam

.itself

:In the Qur'an, in the sura called alShura (Counsel), it is said

And those who answer their Lord, and perform the prayer, their affair being counsel" (between them, and expend of that We have provided them with." (۴۲:۳۸

This verse describes the true believers and followers of Islam in this way: they reply to the call of God, they establish prayer, they do their work in consultation with each other, and they dispose of that which God has bestowed on them. So, in the view of Islam, consultation and the exchange of ideas is one of the basic principles of life for .people of faith, the true followers of Islam

:In "Nahj alBalaqha" it is said

Know that a group of the slaves of Allah with whom knowledge of Allah was entrusted keep His secret; they cause His springs to flow (i.e., they open the springs of knowledge for the people), they have friendly relations with one another and feelings of affection, they meet each other with warmth and cheerfulness and love, they quench each other's thirst from the cup of their acquired knowledge, and they .emerge with their thirsts quenched

If scientific consultation were to come into existence in the science of fiqh, and the principle of the exchange of ideas were to be thoroughly practiced, many of the differences between legal opinions would be resolved, quite apart from the advances that would be made in the science as such. There is no alternative: if we maintain that our fiqh is also one of

the world's genuine sciences, we must make use of the methods used in the other .sciences. If we do not, the result will be that it will no longer be considered a science

I have other useful and urgent recommendations, but my time is running out and I cannot mention them now, for it would take almost another three quarters of an hour, .and I know that some people have a long way to go to reach their homes

:The verse of the Qur'an which I quoted at the beginning was

It is not for the believers to go forth all together; but why should not a party of every" section of them go forth, to become learned (yatafaqqahu) in the religion, and to warn (their people when they return to them, that they may beware." (۹:۱۲۲

This verse explicitly instructs that a group of the Muslims should study (tafaqquh) their religion and let others benefit from what they have studied. Tafaqquh is from the root fqh. The meaning of fiqh is not mere understanding: rather, it is deep understanding :of, and perfect insight into, the truth of something. In his "Mufradat", Raghib (۱), says

.Fiqh is the reaching for hidden knowledge by means of manifest knowledge

:Taffaquh is defined as

.Going after something and becoming expert in it

The above verse is addressed to Muslims whose understanding of Islam is not superficial, telling them to think deeply and discover the meaning and the spirit of the rules of Islam. This verse is the evidence

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۱- "AlMufradat fi Gharib alQur'an", (ed. M. S. alKilani, Cairo, ۱۹۶۱), by Abu lQasim al... Husayn b. Muhammad b. alMafdal alIsfahani (d. ۵۰۲/۱۱۰۸۹), a famous lexicon of .obscure meanings in the Qur'an

for ijtihad and the study of fiqh, and it is also the evidence for our recommendations. Just as this verse lays the foundation for ijtihad and tafaqquh in Islam, so also it advocates that these two things should be more widely practiced. More attention should be paid to what is required, the `ulama' should start to sit in fiqh counsels, the individualistic approach should be discouraged, and branches of specialization should .be created, so that our fiqh may continue on its path of perfection

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ٩

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ٢٠٠٧, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities .in religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field

and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes of people interested in reading, with various formats in the .cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

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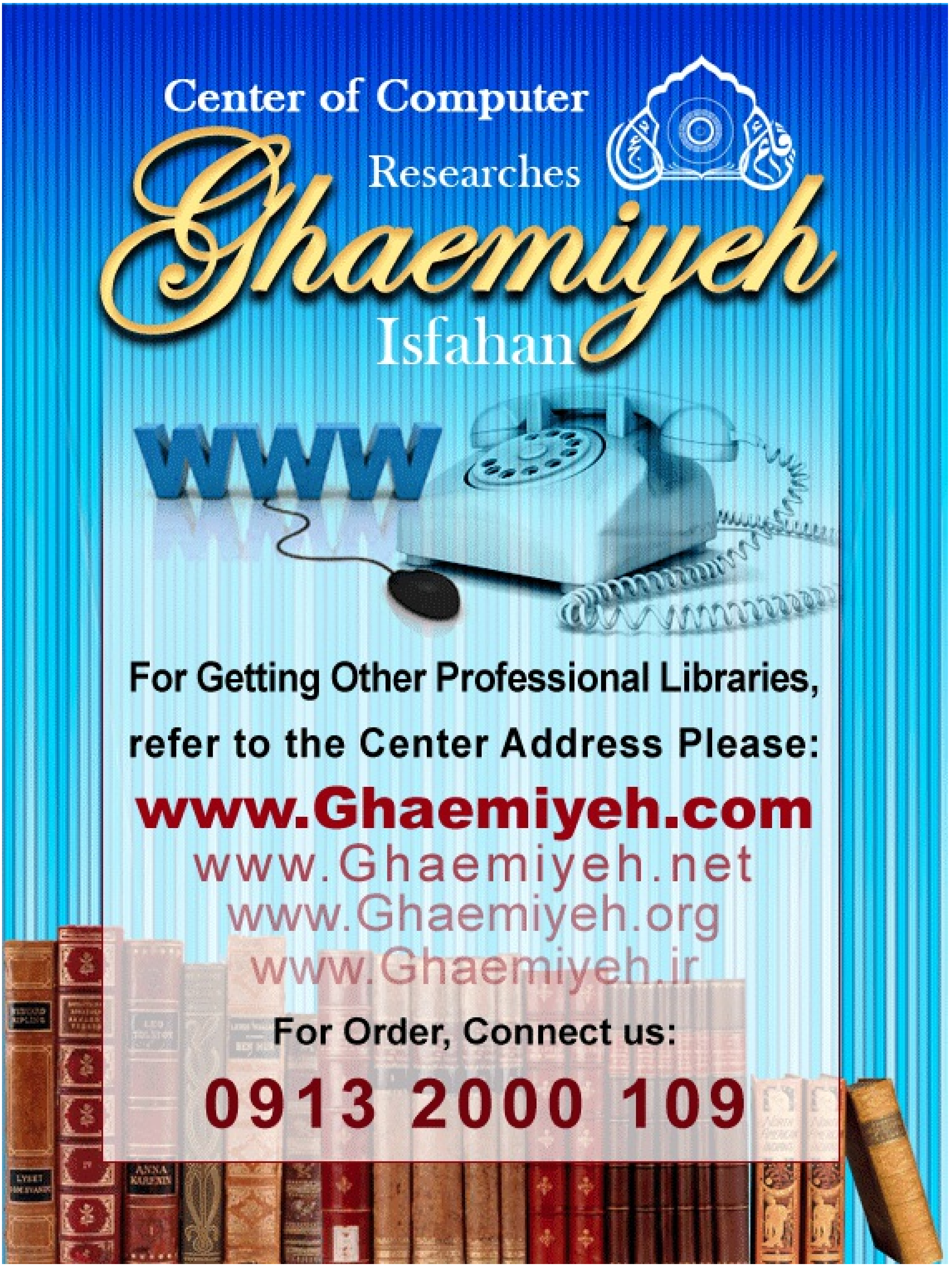
Also producing four markets named "Ghaemiyeh Book Market" with Android, IOS,- WINDOWS PHONE and WINDOWS editions

:Appreciation

We would appreciate the centers, institutes, publications, authors and all honorable .friends who contributed their help and data to us to reach the holy goal we follow

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